

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3926 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRAFUL KHANDUBHAI DESAI

Versus

STATE OF GUJARAT

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Appearance:

PARTY-IN-PERSON for Petitioner

MR ST MEHTA, APP for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 18/09/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned APP  
Shri ST Mehta. With the consent of the parties, the  
matter is taken up for final hearing today.

The petitioner claims to be the owner of "  
Rudraksh Mala " studded in gold. As the said Rudraksh  
Mala was stolen, he had filed a complaint at JP Road  
Police Station, JP Nagar, Baroda. The said complaint was  
registered as CR.I No.183/95. In the course of

investigation, the said Rudraksh Mala was recovered from the accused and, therefore, the present petitioner had given an application under sec.451 of Cr.P.Code for interim custody of Rudhraksh Mala. The said application was rejected by the Ld. Chief Judicial Magistrate, Baroda by his order dated 11.12.1995.

Being aggrieved by the said order, the petitioner had filed Cri. Rev. Application No. 16/96 in the Court of Addl.Sessions Judge, Baroda. The said Cri. Revision Application was also rejected on 27.3.1996.

It is pertinent to note that after considering relevant factors, even the police authorities did not object to giving interim custody of the muddamal to the present petitioner.

The petitioner who is appearing in person is ready and willing to give undertaking to this Court that during the pendency of the trial, he would not dispose of or part with possession of the said Mala and he would also give an undertaking to this Court that the Mala in question would be produced before the Trial Court in same condition as and when he is directed to do so.

Looking to the peculiar facts and circumstances of the case and religious importance of the Rudraksh Mala for the petitioner, in the interest of justice, it would be just and proper to direct the Trial Court to give interim custody of the muddamal Rudraksh Mala to the petitioner who claims to be its owner.

In view of the above-referred circumstances and especially in view of the report of the police to the effect that Rudraksh Mala- Muddamal be given to the petitioner, it is directed that interim custody of the Rudraksh Mala in question be given to the petitioner upon his giving an undertaking to this Court that the petitioner would not transfer or assign or would not part with possession of the Mala in question during the pendency of the trial and he would further give an undertaking to this Court that he would produce Rudraksh Mala in the same condition before the Trial Court as and when he is directed to do so. This undertaking shall be filed by the petitioner within a period of 10 days from today.

In the circumstances, this application is allowed and the order passed in Cri. Rev. Application No. 16/96 by the Ld. Addl. Sessions Judge, Baroda dated 27.3.1996 confirming the order passed by the Ld. Chief

Judicial Magistrate, Baroda dated 11.12.1995 is quashed  
and set aside. Rule is made absolute.

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